SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 20

J. O. STOLL,

Petitioner,

vs.

WILLIAM GOTTLIEB.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR PETITIONER.

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INDEX.

Subject Index.

Table of Cases Cited.

TEXT BOOKS CITED.

ARTICLES OF THE CONSTITUTION AND STATUTES CITED.

(Extracts are Quoted in Appendix.)

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Opinions Below.

The opinion of the Supreme Court of Illinois is reported in 368 Ill. 88, and appears in full beginning at page 63 of the Record filed herein. Justices Jones and Wilson dissented.

The opinion of the Appellate Court of Illinois, First District, is reported in 289 Ill. App. 595, and appears in full

beginning at page 41 of the Record filed herein. Justice Matchett dissented.

Both opinions contain a statement of the facts and questions decided by the respective courts.

Jurisdiction of This Court.

This Court has jurisdiction of this cause under Section 237 (b), Judicial Code of the United States, as amended (28 U. S. C. A., Sec. 344 (b)).

The refusal of the State court to give full faith, credit and effect to the judgments and decree of the Federal court raised a Federal question (*Phoenix Fire and Marine Insurance* v. *Tennessee*, 161 U. S. 174, 185; *Chesapeake & Ohio Railway Co.* v. *McCabe*, 213 U. S. 207, 215; and *West Side Belt R. R. Co.* v. *Pittsburgh Construction Co.*, 219 U. S. 92, 99); and deprived the petitioner of a right or immunity specially set up and claimed under the Constitution and a statute of the United States. In this situation this court has jurisdiction (*Nutt* v. *Knut*, 200 U. S. 13, 18-19; *Pittsburgh &c. Railway* v. *Loan & Trust Co.*, 172 U. S. 493, 507-510).

The State court construed the Bankruptcy Act and declared that the Federal court did not have power under that act to put into effect the plan of reorganization involved, and therefore, that its decree was void and subject to collateral attack, thereby depriving the petitioner of a right or immunity specially set up and claimed under the Constitution and a statute of the United States. The determination of this Federal question by the State court brings this case within the jurisdiction of this Court (*California* v. *Deseret Water &c. Co.*, 243 U. S. 415, 417).

The petitioner, at the inception of this suit, filed a defense in the trial court in which he specially set up the proceedings in the United States District Court for the Northern District of Illinois, Eastern Division, for the reorganization

of a corporation under Section 77-B of the Bankruptcy Act (R. 7), including the plan of reorganization (R. 8), the decree confirming the plan of reorganization (R. 9), and the determination by the Federal court on two occasions (R. 10 and 16) of the question of the power of the Federal court, and claimed that the respondent was entitled only to that which was provided for him in the proceedings in the Federal court (R. 10).

The plan of reorganization and decree confirming it provided that the respondent should be entitled to certain stock and cash (R. 23), that the guaranty of the petitioner should be cancelled and surrendered in consideration for the transfer of all the assets of the debtor corporation to a new corporation and the surrender of the capital stock of the debtor (R. 23), and, further, that all claims and rights of the respondent be discharged and cancelled and the only rights of the respondent should be those accruing to him through the securities to be issued by the new corporation (R. 23).

The question of the power of the United States District Court to cancel the guaranty was specifically determined by the United States District Court upon objection of other bondholders by pleading, proof, hearing and judgment (R. 36). The same question was again determined by that court upon the petition of the respondent, answer, hearing and judgment (R. 38).

The trial court refused to give full faith, credit and effect to the plan of reorganization, the decree confirming the plan, and the judgments of the district court on the question of the power of the district court; found the issues for the respondent (R. 17), overruled the petitioner's motion for a new trial (R. 17), to which exception was duly taken (R. 17), and entered judgment against the petitioner for the principal amount of the bonds and interest thereon (R. 17).

The petitioner appealed to the Appellate Court of Illi-

nois, First District, which court held that the question of jurisdiction of the Federal court was *res judicata*, and therefore reversed the judgment of the trial court (R. 44).

The respondent appealed to the Supreme Court of Illinois, being the highest court of that State, upon leave granted; and contended that the decree confirming the plan of reorganization and cancelling the guaranty was void in that respect and subject to collateral attack (R. 53). The petitioner contended that the question of the power of the United States District Court was settled by the judgment of the United States District Court on that question, and, furthermore, that the United States District Court did have power to determine the rights of the respondent in the first instance (R. 57).

Practice in Illinois does not permit or require a formal assignment of errors.

The Supreme Court of Illinois held that the judgments of the Federal court on the question of the power of the Federal court were not binding on it (R. 67); proceeded to construe the Bankruptcy Act according to its conception of the law (R. 66); and held that the decree and plan of reorganization determining the rights of the respondent were void and subject to collateral attack (R. 68). The Supreme Court refused to give effect to the plan of reorganization and decree confirming it, affirmed the judgment of the Municipal Court for the principal amount of the bonds and interest thereon (R. 17), and reversed the judgment of the Appellate Court, thereby depriving the petitioner of a right or immunity specially set up and claimed under the Constitution and a statute of the United States.

A petition for rehearing was filed, specifically requesting that full faith, credit and effect should be given to the judgments and decree of the Federal court (R. 70, 79), which, after being entertained and considered by said court, was denied on February 10, 1938.

Petition for certiorari was filed in this Court April 2, 1938, and certiorari was granted May 16, 1938.

Statement of the Case.

The facts in this case are set out in the opinions of the Supreme Court of Illinois (368 Ill. 88; R. 63), and the Appellate Court of Illinois, First District (289 Ill. App. 595; R. 41), and also in the Petition (pages 2-4).

Facts and Issues:

Respondent brought suit in the Municipal Court of Chicago against the petitioner upon mortgage bonds issued by a corporation and the guaranty thereof by the petitioner (R. 1).

Before this suit was brought, the bonds and guaranty had been cancelled and the respondent's rights had been determined by a plan of reorganization (R. 23) confirmed by a decree of the United States District Court for the Northern District of Illinois, Eastern Division (R. 26), in proceedings for reorganization of a corporation under Section 77-B of the Bankruptcy Act as amended.

Petitioner specially set up and claimed as a complete defense to this suit in the Municipal Court the proceedings in the Federal court which showed:

> that the guaranty had been cancelled and the respondent's rights determined by the plan of reorganization (R. 8) and decree of the district court confirming the plan (R. 9) in said proceedings in the district court (R. 7);
>
> that the plan provided certain stock and cash for the holders of said bonds and guaranty sued upon by the respondent (R. 8);

that the respondent had been made a party to the proceedings in the district court by proper notice (R. 9); and,

furthermore, that the question of the power of the United States District Court to cancel the guaranty had been specifically determined by that court upon objection of other bondholders (R. 10).

After the petitioner had filed his defense in the Municipal Court of Chicago, the respondent filed in the United States District Court his petition to vacate the decree confirming the plan of reorganization directly challenging in the United States District Court the power of the district court to cancel a guaranty and determine his rights (R. 31), and the district court again decided in favor of its said power under Section 77-B of the Bankruptcy Act (R. 38), and refused to modify or vacate its decree confirming the plan of reorganization.

No appeal was taken from this decision (R. 38).

Petitioner then specially set up in the proceedings in the Municipal Court the further proceedings in the Federal court, and claimed as a further defense that the question of the power of the United States District Court was *res judicata* (R. 16).

The Municipal Court found the issues for the respondent, and entered judgment against the petitioner for the principal amount of the bonds and interest thereon (R. 17).

Petitioner appealed to the Appellate Court of Illinois, First District, which court held that the question of power of the Federal court was *res judicata*, and reversed the judgment of the trial court (R. 44).

Respondent appealed to the Supreme Court of Illinois.

Rulings of the Supreme Court of Illinois:

The Supreme Court of Illinois held:

1. That a Federal court is without jurisdiction to cancel a guaranty while sitting in bankruptcy under Section 77-B for the reorganization of a debtor corporation (R. 66);

2. That the district court in this case was wholly without jurisdiction of the subject matter of this guaranty, and that that part of its decree which cancelled the guaranty was therefore void and subject to collateral attack (R. 66); and

3. That under the circumstances existing in this case, a judgment on a jurisdictional question of fact settles the question, but a judgment on a jurisdictional question of law is not binding on any other court (R. 67).

The Supreme Court of Illinois refused to give full faith, credit and effect to the judgments of the United States District Court on the question of the power of the District Court; refused to give effect to the decree and plan of reorganization of the United States District Court; reversed the judgment of the Appellate Court of Illinois, and affirmed the judgment of the Municipal Court; thereby depriving the petitioner of a right or immunity specially set up and claimed under the Constitution and a statute of the United States.

Questions Presented:

The questions presented are:

A.

1. Are the judgments of a United States District Court, determining a jurisdictional question of Federal law, entitled to full faith, credit and effect in a State court; and

2. If so, is the jurisdictional question closed to further inquiry in a collateral action in a State court under the doctrine of *res judicata?*

B.

1. Is a decree confirming a plan of reorganization of a corporation in proceedings under Section 77-B of the Bankruptcy Act, which, amongst other things, cancels a guaranty, absolutely void, in whole or in part, and subject to collateral attack?

There is no question of compliance with statutory jurisdictional requirements, jurisdiction of the persons, or jurisdiction of the proceedings under Section 77-B of the Bankruptcy Act. It is contended by the respondent that the United States District Court exceeded its power under the law.

Articles of the Constitution and Statutes Involved:

The Articles of the Constitution and the Statutes involved are listed below, and extracts thereof are set out in the Appendix:

Constitution, Article I, Sec. 8, Subsec. Fourth; (p. 27).
Article III, Sec. 2; (p. 27).
Article IV; (p. 27).

U. S. C., 1934, Title 11:
Ch. 1, Sec. 1 (8), p. 319 (p. 28).
Ch. 2, Sec. 11, p. 319 (p. 28).
Ch. 8, Sec. 206, p. 341 (Sec. 77-A, Bankruptcy Act) (p. 28).
Sec. 207 (a), p. 341 (Sec. 77-B (a) Bankruptcy Act) (p. 28).
Sec. 207 (b), p. 342 (Sec. 77-B (b) Bankruptcy Act) (p. 29).

Sec. 207 (g), p. 345 (Sec. 77-B (g) Bankruptcy Act) (p. 29).
Sec. 207 (j), p. 345 (Sec. 77-B (j) Bankruptcy Act) (p. 30).
Sec. 207 (o), p. 346 (Sec. 77-B (o) Bankruptcy Act) (p. 30).

Specification of Assigned Errors.

The State court erred in its refusal and failure to give full faith, credit and effect to the plan of reorganization, decree and judgments of the Federal court which determined the rights of respondent, thereby depriving the petitioner of a right or immunity specially set up and claimed under the Constitution and a statute of the United States.

The State court erred in holding that the judgment of the United States District Court entered on the petition of the respondent, deciding that it had power to enter the decree confirming the plan of reorganization, did not settle the question between the parties.

The State court erred in holding that the district court was wholly without jurisdiction of the subject matter of said guaranty while sitting in bankruptcy under Section 77-B for the reorganization of a corporation, and that part of its decree was therefore void and subject to collateral attack.

Summary of Argument.

I. The State court proceeded first to declare that a Federal court is without jurisdiction to cancel a guaranty while sitting in bankruptcy under Section 77-B for the reorganization of a debtor corporation. It refused and failed to give full faith and credit to the judgments of the Federal court determining that question in this case, and refused to give effect to the plan of reorganization, decree of confirmation and said judgments.

The judgments, decree and plan of reorganization confirmed by the Federal court are entitled to full faith, credit and effect in the State court.

II. The State court then decided that the determination of a jurisdictional question of law, as distinguished from a jurisdictional question of fact, and particularly the determination by the Federal court in this case of whether or not it had power to cancel a guaranty, does not come within the doctrine of *res judicata*.

There is no authority for such a distinction. It is contrary to all authority and precedent. It would lead to an absurd result.

III. After having declared that the Federal court did not have jurisdiction of the subject matter of the guaranty, and having ruled that the determination of this same question of law by the Federal court was not binding on the parties, the State court held that that part of the plan of reorganization and decree confirming it which cancelled the guaranty was void and subject to collateral attack.

Even if the proceedings of the Federal court were erroneous, they were not void and subject to collateral attack.

ARGUMENT.

I.

The judgments and decree of the United States District Court are entitled to full faith, credit and effect in the State court.

Section 77-B (j), Bankruptcy Act (U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (j), page 345) (Appendix p. 30), provides that a certified copy of the decree confirming a plan of reorganization or of any other decree or order in proceedings under that section shall be evidence of the jurisdiction of the court, and the fact that the decree or order was made.

Certified copies of the decree confirming the plan of reorganization (R. 26) and of the pleadings and judgment on the question of power of the Federal court were received in evidence in the State court (R. 31).

The judgments and decrees of the United States District Courts are entitled to the same full faith, credit and effect in the State courts as the judgments of the courts of a sister State under Article IV of the Constitution of the United States.

Supreme Lodge, Knights of Pythias v. *Meyer*, 265 U. S. 30, 33;
Hancock National Bank v. *Farnham*, 176 U. S. 640, 645;
Embry v. *Palmer*, 107 U. S. 3, 9;
Dupasseur v. *Rochereau*, 21 Wall. 130;
Ambler v. *Whipple*, 139 Ill. 311, 323;
15 R. C. L. 989, Sec. 463.

There has been no dispute about the effect of the proceedings in the Federal court. The plan provided for the organization of a new corporation, and that for each $100 of bonds issued by the debtor corporation there be issued to the owners thereof one share of common stock in the new corporation, together with the payment of certain overdue interest to the bondholders, and that the personal guaranty of the petitioner be cancelled and surrendered in consideration of the transfer of all the assets of said debtor to a new corporation and the surrender of the common stock of the debtor (R. 23); and provided further that all claims and rights of stockholders and creditors of the debtor upon the confirmation of the plan be discharged and cancelled, cease and terminate, and that the only rights of said stockholders and creditors shall be those accruing to them in and through the securities to be issued by the new corporation (R. 23). The plan and decree further provided, in the language of Section 77-B (g), Bankruptcy Act (U. S. C. 1934,

Title 11, Ch. 8, Sec. 207 (g), page 345) (Appendix p. 29), that "the provisions of the plan and the order of confirmation shall be and are binding upon * * * (3) all creditors, secured or unsecured, whether or not affected by the plan and whether or not their claims shall have been filed, and if filed, whether or not approved, including creditors who have not, as well as those who have, accepted" (R. 30). The respondent was entitled only to that which was provided for him in the Federal court proceedings.

But the State court held that the Federal court was wholly without jurisdiction of the subject matter of the guaranty and that part of its order was therefore void (R. 66), and affirmed the judgment of the trial court against the petitioner for the principal amount of the bonds and interest thereon. The Federal court had expressly found, in the original proceedings, that the debtor had complied with all the provisions of Section 77-B of the Bankruptcy Act (R. 29), and construed the Bankruptcy Act as authorizing the plan of reorganization in question, which determined the rights of the respondent. On two other occasions it had expressly passed on the question of its power under Section 77-B of the Bankruptcy Act, namely, when creditors of the same class raised the question (R. 36), and afterward when the respondent again raised the question (R. 38). This question was squarely put in issue and decided. There was no appeal from these decisions. Even if the finding of compliance with all the provisions of Section 77-B of the Bankruptcy Act in the decree confirming the plan of reorganization be considered too general, or if the finding be considered a mere formal recital of jurisdiction, still, the two subsequent judgments by the Federal court on this same question of jurisdiction of the subject matter are also entitled to full faith, credit and effect in the State court.

The doctrine that a court which has general jurisdiction over the subject matter and the parties to a cause is com-

petent to decide questions arising as to its jurisdiction, and therefore that such decisions are not open to collateral attack, has been so often expounded by this Court that it may be taken as elementary and requiring no further reference to authority.

Ex Parte Harding, 219 U. S. 363, 369;
Dowell v. *Applegate,* 152 U. S. 327, 340;
Forsyth v. *Hammond,* 166 U. S. 506, 517;
Rew v. *Sioux City Independent School District,* 125 Iowa, 28, 34; 98 N. W. 802, 804;
Chicago Title & Trust Company v. *National Storage Co.,* 260 Ill. 485, 494.

The respondent, of his own volition, invoked the jurisdiction of the Federal court to decide the question of its power, and invoked the jurisdiction of the Federal court to vacate or modify its decree. If the Federal court, upon the petition of the respondent; had decided its decree confirming the plan of reorganization exceeded its power and was void, it had jurisdiction to decide the question that way, and it had jurisdiction to vacate or modify the decree if it was found to be void. And if it had jurisdiction to determine its decree was void, as the respondent prayed in his petition, it must have jurisdiction to determine it was not void. Its decision had to be one way, or the other. Having that jurisdiction, its decision, whether correct or not, is binding on the respondent until reversed in a direct proceeding, and is not subject to collateral attack.

The effect of the determination by the Federal court of the question of jurisdiction of the subject matter is to preclude the State court from inquiry into the same question, under the doctrine of *res judicata.*

The State court failed and refused to give that full faith, credit and effect to the judgments and decree of the Federal court to which they are entitled.

II.

The question of the power of the Federal Court under Section 77-B of the Bankruptcy Act was settled by the Federal court, under the doctrine of res judicata.

In this case, the Federal court on two occasions had passed on the question of its power, and had decided against the respondent. There was no appeal from those decisions.

The Supreme Court of Illinois went far out of its way to nullify the proceedings in the Federal court.

In *Van Matre* v. *Sankey*, 148 Ill. 536, 552, it held that where a statute of a State has been given construction by the highest tribunal of the State, such construction will, ordinarily, in the courts of a sister State, be adopted as binding and conclusive, even though the examining court finds that upon similar language in a statute within their own sovereignty, they would place a different and even reverse construction.

The judgments of a Federal court must be given the same recognition in a State court as the judgments of the courts of a sister State.

In *Chamblin* v. *Chamblin*, 362 Ill. 588, 592, by unanimous opinion, the Illinois Supreme Court stated;

> "A court's jurisdiction having been once attacked, the former adjudication precludes the raising of the question again."

In the present case, however, it held that the determination of a jurisdictional question of law does not preclude the raising of the question again (R. 67). No authority is cited to support the attempted distinction, and the petitioner is unable to find any that does. The reason given for the ruling is that otherwise there would be no way by statute or constitution to limit the jurisdiction of the courts. Apparently, the court lost sight of the fact that adequate means are pro-

vided by statute for appeal from such a decision to a court of competent appellate jurisdiction where the original decision may be reviewed, and, if necessary, may be corrected. The respondent in this case did not appeal.

If any party chooses to go no further according to law, the decision must be binding upon him. Otherwise, utter confusion would result. No reliance could be placed upon any judgment. Every judgment would be subject to collateral attack, even if jurisdiction of the subject matter had been specifically determined, as in this case. If not satisfied with the decision of one or more courts, either party could continue to bring suit until a court was found that would decide as desired. And, under the attempted distinction from the rule, we see no reason why even that decision would be final. The matter could go on *ad infinitum*.

This court settled this proposition in *Dowell* v. *Applegate*, 152 U. S. 327, 340 (Appendix p. 24), referred to by this Court in *Ex Parte Harding*, 219 U. S. 363, 369 (Appendix p. 24), as a leading authority. Also in the case of *Forsyth* v. *Hammond*, 166 U. S. 506, beginning at page 515 (Appendix p. 25), this court discusses and follows the same principle. *Forsyth* v. *Hammond* involves the effect to be given a State court judgment on a jurisdictional question of law in a Federal court, but, nevertheless, the application of the principle is the same. Another well-reasoned case involving a conclusion of law is *Rew* v. *Sioux City Independent School District*, 125 Iowa 28, 30 to 37, 98 N. W. 802, 803 to 805. The same situation arises in connection with removal of causes from the State courts to the Federal courts. Such cases are:

Chesapeake & Ohio Railway Co. et al. v. *McCabe*, 213 U. S. 207, 220;

Des Moines Nav. & R. Co. v. *Iowa Homestead Co.*, 123 U. S. 552, 559;

Bolen-Darnell Coal Company v. *Kirk*, 25 Okla. 273, 276, 106 Pac. 813, 814, 26 L. R. A. (N. S.) 270.

The State courts have no right to review or control the exercise of jurisdiction by the Federal courts and a Federal judgment sustaining its own jurisdiction cannot be ignored in a State court as one absolutely void. Such a judgment, until reversed by a proper proceeding, is binding on the parties, and must be given force and effect when set up in an action in a State court.

Inasmuch as the respondent selected the United States District Court as the forum for the trial of the same issue of law which he presented in this case, he is concluded by the final adjudication in the Federal court.

III.

The decree of the Federal court under Section 77-B of the Bankruptcy Act is not void in whole or in part and is not subject to collateral attack.

Having declared that the Federal court did not have jurisdiction of the subject matter of the guaranty, and having ruled that the determination of this same question of law by the Federal court was not binding on the parties, the State court held that that part of the plan of reorganization and decree confirming it which cancelled the guaranty was void and subject to collateral attack (R. 68).

The rule in Illinois is that if the court under any circumstances had authority to enter such orders and judgments as it did enter when its jurisdiction over the subject matter and the particular questions and circumstances involved and determined cannot be inquired into or attacked in a collateral proceeding. (*O'Connor* v. *Board of Trustees*, 247 Ill. 54, 57; *Balzer* v. *Pyles*, 350 Ill. 344, 349.)

The authority of the Federal court in this case rests upon:

Article I, Section 8, Subsec. Fourth of the Constitution, (Appendix p. 27) which gives Congress power to establish

laws on the subject of bankruptcy throughout the United States;

Article III, Section 2, of the Constitution, (Appendix p. 27) which provides that the judicial power shall extend to all cases in law or in equity arising under the Constitution and laws of the United States;

U. S. C. 1934, Title 11, Ch. 1, Sec. 1 (8), p. 319 (Bankruptcy Act, Sec. 1 (8)) (Appendix p. 28), which makes District courts of the United States courts of bankruptcy;

U. S. C. 1934, Title 11, Ch. 2, Section 11, p. 319 (Bankruptcy Act, Sec. 2), (Appendix p. 28), which vests the courts of bankruptcy with such jurisdiction at law and in equity as may be necessary for the enforcement of the Bankruptcy Act;

U. S. C. 1934, Title 11, Ch. 8, Sec. 206, p. 341 (Sec. 77-A, Bankruptcy Act) (Appendix p. 28), which provides that the courts of bankruptcy shall have original jurisdiction in proceedings under Section 77-B of the Bankruptcy Act;

U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (a), p. 341 (Sec. 77-B (a), Bankruptcy Act) (Appendix p. 28), which provides that the court shall have and may exercise all powers which a Federal court would have had it appointed a receiver in equity;

U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (b), p. 342 (Sec. 77-B (b), Bankruptcy Act) (Appendix p. 29), which shows what provisions may be included in a plan of reorganization; and

U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (o), p. 346 (Sec. 77-B (o), Bankruptcy Act) (Appendix p. 30), which provides that the jurisdiction and powers of the court shall be the same as in voluntary bankruptcy proceedings.

Cancellation of instruments is not wholly beyond the jurisdiction of the Federal courts. The Federal court is not so wholly lacking in any color of authority that its action

may be declared a nullity by a court not having competent appellate jurisdiction.

This Court has held that bankruptcy proceedings are equity proceedings (*Local Loan Co.* v. *Hunt*, 292 U. S. 234, 240); that proceedings under Section 77 of the Bankruptcy Act are proceedings in equity (*Continental Illinois National Bank & Trust Co.* v. *Chicago, Rock Island & Pacific Railway Co.*, 294 U. S. 648, 676); and that a guaranty may be cancelled in equity (*Louisville, N. A. & C. Railway Co.* v. *Louisville Trust Co.*, 174 U. S. 552, 567). It has been held that the decree of a district court of the United States, cancelling a forged marriage contract, may be used to stay the enforcement of judgments for property rights recovered upon such contract in a subsequent suit in a State court. (*Sharon* v. *Terry*, 36 Fed. 337, 351). Another case involving the cancellation of instruments is *Thompson* v. *Emmett Irrigation District*, 227 Fed. 560, 565.

The State court relies upon *In re Diversey Building Corporation*, 86 F. (2d) 456; *Nine North Church Street, Inc.*, 82 F. (2d) 186; and *Armstrong* v. *Obucino*, 300 Ill. 140; as authorities for its declaration that the Federal court was wholly without jurisdiction of the subject matter of the guaranty, and its ruling that part of the order confirming the plan of reorganization was therefore void (R. 66). But that question was not properly before the State court. The Federal court had decided that question in this case, and that decision of the Federal court is binding on the parties.

Furthermore, the U. S. Circuit Court of Appeals, in *In re: Diversey Building Corporation*, 86 F. (2d) 456, was careful to say at the end of its opinion in that case:

> "It must be understood that this opinion is applicable only to the facts as here presented."

There is no sweeping declaration in that case, nor in any other, that the United States District Court in proceedings

for reorganization under Section 77-B of the Bankruptcy Act may not confirm such a plan as the one involved herein under all the facts and circumstances presented herein.

In *In re Nine North Church Street, Inc.*, 82 F. (2d) 186, (C. C. A. 2), the appellants held certificates of beneficial interest in a group of bonds issued by various corporations, which certificates were guaranteed by Maryland Casualty Company. The court expressly says, at page 189 of the opinion:

> "But there is no obligation running from the debtor to the appellants and the appellants are not seeking to interfere with the debtor's property. They are enforcing a personal right against Maryland. * * * *The question would be different if the appellants held the debtor's bonds.* But the appellants here are certificate holders, not creditors of this debtor." (Italics ours.)

Since the appellants were not creditors of the debtor, the court had no jurisdiction over them nor over their claims. The opinion clearly shows that the decision rested upon the fact that there was no obligation from the debtor to the appellants, and gives the unmistakable inference that if the appellants had held the debtor's bonds the decision would have been different.

The case of *Armstrong* v. *Obucino*, 300 Ill. 140, has no application here. That case involved a direct attack in the State court of original jurisdiction on proceedings under the provisions of the State's law providing for mechanic's liens, on account of failure to comply with the statute in the proceedings. It did not involve a collateral second attack in a court of another sovereignty, or jurisdiction, after the question had been determined in the court of original jurisdiction, as in this case. There is no failure to comply with the statute in this case.

On the other hand, in *In re 1775 Broadway Corporation*, 79 F. (2d) 108, 110 (C. C. A. 2), the Circuit Court of Appeals

expressly held that in a 77-B reorganization proceeding the court might, as a part of the reorganization plan, and after being satisfied that it was fair and just so to do, release the trustee under the mortgage bond issue from a claim of personal liability for mismanagement of the trust.

In the case of *In re Central Funding Corporation*, 75 F. (2d) 256 (C. C. A. 2nd), the plan of reorganization released the guarantor. The approval of this plan and the affirmance of the order of confirmation by the Circuit Court of Appeals, indicates clearly, that in their opinion the court below has the power and the jurisdiction to modify an existing guaranty in a reorganization proceeding.

The test apparently is simply whether the court exercised its discretion properly and judiciously in approving the particular plan of reorganization. There is no fixed form that a plan of reorganization must take. The court of original jurisdiction must consider and weigh all the rights and equities involved, and if it finds, as it did in this case, that the plan is fair, equitable and feasible, is proposed in good faith, and is in compliance with the provisions of subdivision (b) of Section 77-B of the Bankruptcy Act, it may confirm the plan and make it binding upon all parties involved.

The State court cites *Demilly* v. *Grosrenaud*, 201 Ill. 272; *Rabbitt* v. *Weber & Co.*, 297 Ill. 491; *Ashlock* v. *Ashlock*, 360 Ill. 115, as authority for the proposition that the proceedings in the Federal court with reference to the guaranty are void and subject to collateral attack (R. 68). Those cases involve domestic judgments in special statutory proceedings, namely, appeal from a justice of the peace, attachment, and adoption proceedings, respectively, in which there was a failure to show strict compliance with the necessary statutory jurisdictional requirements. In the present case there is no failure whatever to comply with the statute. In those cases the questions of compliance depended upon matters of fact. The law in Illinois with reference to collateral attack

based upon jurisdictional matters of fact is settled in the case of *Chamblin* v. *Chamblin*, 362 Ill. 588, 592; which was reaffirmed in this case as to jurisdictional matters of fact. Those cases do not discuss, or rule on, the question of a collateral second attack on a judgment in another jurisdiction after an unsuccessful first attack in the original jurisdiction where the question of jurisdiction of the subject matter was previously specifically decided. *O'Connor* v. *Board of Trustees*, 247 Ill. 54, also cited as authority for the State court's ruling, sustains the position of the petitioner in this case.

The courts of the United States, though of limited jurisdiction, are not on that account inferior courts in the technical sense, whose judgments, taken alone, are to be disregarded. Such courts stand upon the same footing as courts of record of general jurisdiction and all the presumptions which are indulged in favor of superior tribunals of general jurisdiction are equally extended to the courts of the United States. Their judgments cannot be impeached for error or irregularity in a collateral proceeding; they can be vacated only on motion in the courts in which they are rendered, or reversed for error in an appellate jurisdiction:

McCormick v. *Sullivant*, 10 Wheat. 192, 199;
Des Moines Nav. & R. Co. v. *Iowa Homestead Co.*, 123 U. S. 552, 558;
Edelstein v. *U. S.* (C. C. A., 8th, 1906), 149 Fed. 636, 638;
In re First Natl. Bank of Belle Fourche (C. C. A., 8th, 1907), 152 Fed. 64, 70;
Henderson et al. v. *Denious* (C. C. A. 8th, 1911), 186 Fed. 100, 105;
Reed v. *Vaughan*, 15 Mo. 137, 141;
15 R. C. L. 886, Sec. 364.

Even if erroneous, the proceedings of the Federal court were not void and subject to collateral attack.

The State court says in its opinion that "jurisdiction of the subject matter cannot be conferred by consent, is not waived by appearance, and may be raised at any time. *Town of Kingston* v. *Anderson*, 300 Ill. 577; *Rabbitt* v. *Weber & Co., supra*" (R. 68). That rule does not apply under the facts of this case. It may apply in a case where the question of jurisdiction of the subject matter has not been litigated and determined. There is not the slightest suggestion in this record that jurisdiction of the subject matter was conferred by consent or depends upon any appearance. In this case the question of jurisdiction of the subject matter under the law was raised in the Federal court, was litigated there, and finally determined by that court. The rule that does apply was stated by the Supreme Court of Illinois in *Chamblin* v. *Chamblin*, 362 Ill. 588, 592:

> "A court's jurisdiction having been once attacked the former adjudication precludes the raising of the question again."

and by this court in:

Ex Parte Harding, 219 U. S. 363, 369;
Dowell v. *Applegate*, 152 U. S. 327, 340;
Forsyth v. *Hammond*, 166 U. S. 506, 517.

Conclusion.

The State court failed to give that full faith, credit and effect to the judgments and decree of the Federal court to which they are entitled.

The question of jurisdiction having been determined by the Federal court upon the petition of the respondent, its decision is binding on the parties under the doctrine of *res judicata*, and must be given force and effect in the State court.

The proceedings in the Federal court are not a nullity and subject to collateral attack.

The judgment of the Supreme Court of Illinois is contrary to important fundamental principles of law and should be reversed, and the judgment of the Appellate Court of Illinois, First District, should be affirmed.

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APPENDIX.

Excerpts from Cases Cited.

Ex Parte Harding, 219 U. S. 363, 369:

"The doctrine that a court which has general jurisdiction over the subject matter and the parties to a cause is competent to decide questions arising as to its jurisdiction, and therefore that such decisions are not open to collateral attack, has been so often expounded (see *Dowell* v. *Applegate*, 152 U. S. 327, 337 and cases cited) and has been so recently applied (*Hine* v. *Morse*, 218 U. S. 493), that it may be taken as elementar, and requiring no further reference to authority."

Dowell v. *Applegate*, 152 U. S. 327, 340:

"These cases establish the doctrine that, although the presumption in every stage of a cause in a Circuit Court of the United States is that the court is without jurisdiction unless the contrary affirmatively appears from the record, *Börs* v. *Preston*, 111 U. S. 252, 255, and the authorities there cited, yet, if such jurisdiction does not so appear, the judgment or final decree cannot, for that reason, be collaterally attacked, or treated as a nullity.

"These authorities, above cited, it is said do not meet the present case, because the ground on which it is claimed, the federal court assumed jurisdiction was insufficient in law to make this case one arising under the laws of the United States. But that was a question which the Circuit Court of the United States was competent to determine in the first instance. Its determination of it was the exercise of jurisdiction. Even if that court erred in entertaining jurisdiction, its determination of that matter was conclusive upon the parties before it, and could not be questioned by them or either of them collaterally, or otherwise than on writ of error or appeal to this court. As said in *Des Moines Nav. Co.* v. *Iowa Homestead Co.*, above cited, if the Circuit Court

'kept the case when it ought to have been remanded, or if it proceeded to adjudicate upon matters in dispute between two citizens of Iowa, when it ought to have confined itself to those between the citizens of Iowa and the citizens of New York, its final decree in the suit could have been reversed, on appeal, as erroneous, but the decree would not have been a nullity.' To determine whether the suit was removable in whole or in part or not, was certainly within the power of the Circuit Court. The decision of that question was the exercise and the rightful exercise of jurisdiction, no matter whether in favor of or against taking the cause. Whether its decision was right, in this or any other respect, was to be finally determined by this court on appeal.' ".

Forsyth v. *Hammond*, 166 U. S. 506, 515:

"Coming now to the merits of the case it appears that on the pivotal question of the validity of the annexation proceedings the decision of the Supreme Court of the State is one way and that of the Court of Appeals directly the reverse. It is insisted by the plaintiff that the determination of the boundaries of a municipal corporation in the first instance, and any subsequent change in its boundaries by annexation of outside territory, are matters solely of legislative cognizance, and not judicial in their nature; that such is the general rule obtaining in the several States of the Union and up to the time of the decision of the Supreme Court of Indiana in this controversy, recognized in that State as elsewhere; that, therefore, the judicial proceedings in respect to this controversy in the courts of the State, culminating in the decision of its highest court, were beyond the jurisdiction of such courts, and not to be regarded as creating an adjudication binding upon other tribunals. * * *

But back of any criticism of the reasoning of the Supreme Court in its two opinions lies the fact of its decision. And here these things appear. The city of Hammond sought to bring within its limits, among other territory, the lands of plaintiff. After action by the

city council, the city instituted proceedings before the county commissioners, which proceedings were subsequently taken by appeal, as prescribed by statute, to the Circuit Court, a court of general jurisdiction, and in that court a decree was entered annexing plaintiff's lands to the City of Hammond. Were or were not these proceedings valid, and was or was not such decree a binding adjudication which neither the city nor the plaintiff could elsewhere dispute? That question certainly is one of a judicial nature. Now it is no less a judicial function to consider whether those proceedings and that decree were valid and effective, and determine that they were and operated to annex plaintiff's territory to the city, than to enter upor a like consideration and determine that they were invalid and ineffective to make such annexation. The decision of the Supreme Court of Indiana was in favor of the validity, that of the Court of Appeals against their validity, and if it is judicial to hear and determine one way, it is likewise judicial to hear and determine the other. If action by the state tribunals stopped with the decree of the trial court, it might be said that the plaintiff did not voluntarily seek that forum. She was brought in by appropriate process, and compelled to there litigate the question. But after an adverse decree she insisted that it was not only erroneous but void, and voluntarily commenced an action in the Supreme Court of the State to have that claim established. She invoked the jurisdiction of that court. She summoned the city of Hammond into that forum and there challenged the decree of the Circuit Court, challenged it for error and also for lack of jurisdiction. The questions both of error and of jurisdiction were certainly judicial in their nature and questions within the undoubted cognizance of the Supreme Court. She voluntarily sought its judgment. Can she, after its decision, be heard in any other tribunal to collaterally deny the validity thereof? Does not the principle of *res judicata* apply in all its force? Having litigated a question in one competent tribunal and been defeated, can she litigate the same question in another

tribunal, acting independently, and having no appellate jurisdiction? The question is not whether the judgment of the Supreme Court would be conclusive as to the question involved in another action between other parties, but whether it is not binding between the same parties in that or any other forum. The principles controlling the doctrine of *res judicata* have been so often announced, and are so universally recognized, that the citation of authorities is scarcely necessary. Though the form and causes of action be different, a decision by a court of competent jurisdiction in respect to any essential fact or question in the one action is conclusive between the parties in all subsequent actions. *Cromwell* v. *Sac County*, 94 U. S. 351; *Lumber Co.* v. *Buchtel*, 101 U. S. 638; *Stout* v. *Lye*, 103 U. S. 66; *Nesbit* v. *Riverside Independent District*, 144 U. S. 610; *Johnson Co.* v. *Wharton*, 152 U. S. 252; *Last Chance Mining Co.*, 157 U. S. 683." (Italics ours.)

Articles of Constitution Involved.

Article I, Section 8, Subsec. Fourth of the Constitution vests Congress with the power "to establish * * * uniform laws on the subject of bankruptcies throughout the United States."

Article III, Section 2, of the Constitution provides:

> "(First) The judicial power shall extend to all cases, in law or equity, arising under this Constitution, the laws of the United States, * * *"

Article IV, of the Constitution provides:

> "SECTION 1. Full faith and credit shall be given in each State to the public Acts, records and judicial proceedings of every other State. And the Congress may, by general laws prescribe the manner in which such Acts, records and proceedings shall be proved, and the effect thereof."

Statutes Involved.

U. S. C., 1934, Title 11, Ch. 1, Sec. 1 (8), p. 319 (Bankruptcy Act, Sec. 1(8)):

> "* * * 'courts of bankruptcy' shall include the district courts of the United States, * * *"

U. S. C., 1934, Title 11, Ch. 2, Sec. 11, P. 319 (Bankruptcy Act, Sec. 2):

> "The courts of bankruptcy as defined in the previous chapter, namely the district courts of the United States in the several States, * * * are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as established on July 1, 1898, or as they may be thereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings * * *, to * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title; * * *"

U. S. C., 1934, Title 11, Ch. 8, Sec. 206, p. 341 (Sec. 77-A, Bankruptcy Act):

> "In addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, Courts of Bankruptcy shall exercise original jurisdiction in proceedings for relief of debtors as provided in Section 77-B of this Act."

U. S. C., 1934, Title 11, Ch. 8, Sec. 207 (a), p. 341, (Sec. 77-B (a) Bankruptcy Act):

> "Any corporation which could become a bankrupt under Section 22 of this title, * * * may file an original petition, * * * stating the requisite jurisdictional facts under this section; * * *. Upon the filing of such a petition or answer the judge shall enter an order either approving it as properly filed under

this section, if satisfied that such petition or answer complies with this section and has been filed in good faith, or dismissing it. If the petition or answer is so approved, * * * the court in which such order approving the petition or answer is entered * * * shall have and may exercise all the powers, not inconsistent with this section, which a federal court would have had it appointed a receiver in equity of the property of the debtor by reason of its inability to pay its debts as they mature. * * *"

U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (b), p. 342 (Sec. 77-B (b), Bankruptcy Act):

"A plan of reorganization within the meaning of this section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any character or otherwise; * * * (9) shall provide adequate means for the execution of the plan, which may include * * * the * * * modification of liens, indentures, or other similar instruments, the curing or waiving of defaults, * * * and the issuance of securities of either the debtor or any such corporation or corporations, * * * in exchange for existing securities, or in satisfaction of claims or rights, * * *. The term "claims" includes debts, securities, other than stock, liens or other interest of whatever character."

U. S. C., 1934, Title 11, Ch. 8, Sec. 207 (g) p. 345 (Sec. 77-B (g) Bankruptcy Act):

"Upon such confirmation the provisions of the plan and of the order of confirmation shall be binding upon (1) the debtor, (2) all stockholders thereof, including those who have not, as well as those who have, accepted it, and (3) all creditors, secured or unsecured, whether

or not affected by the plan, and whether or not their claims shall have been filed, and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted it."

U. S. C., 1934, Title 11, Ch. 8, Sec. 207 (j), p. 345 (Sec. 77-B (j), Bankruptcy Act):

"A certified copy of the final decree or of an order confirming a plan of reorganization, or of any other decree or order entered in a proceeding under this section, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the decree or order was made."

U. S. C., 1934, Title 11, Ch. 8, Sec. 207 (o), p. 346 (Sec. 77-B (o), Bankruptcy Act):

"In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition or answer was approved."